

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 ARTANO AIDINI,

5 Plaintiff,

6 v.

7 COSTCO WHOLESALE CORPORATION,

8 Defendant.

Case No. 2:15-cv-00505-APG-GWF

**ORDER DENYING MOTION IN
LIMINE TO PRECLUDE REQUEST
FOR SPECIFIC AMOUNT OF NON-
ECONOMIC DAMAGES**

(ECF No. 47)

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10 Defendant Costco Wholesale Corporation moves to preclude plaintiff Artano Aidini from
11 requesting the jury to award a specific amount of non-economic damages, contending that such a
12 request would undermine the jury's independence by "anchoring" it to a number provided by
13 Aidini. Aidini responds that Costco offers no binding authority for such a limitation and that
14 most jurisdictions defer the matter to the judge's discretion at trial.

15 Trial courts have "wide discretion" as to the presentation of evidence and argument at
16 trial. *See United States v. Layton*, 767 F.2d 549, 554 (9th Cir. 1985). While the Ninth Circuit has
17 not directly opined on the subject, most courts apply the same flexible approach to the issue of
18 whether and how plaintiffs' counsel may request specific damages amounts for pain and
19 suffering. *See, e.g., Lightfoot v. Union Carbide Corp.*, 110 F.3d 898, 912 (2d Cir. 1997) ("It is
20 best left to the discretion of the trial judge, who may either prohibit counsel from mentioning
21 specific figures or impose reasonable limitations, including cautionary jury instructions.");
22 *Barnard v. Las Vegas Metro. Police Dep't*, No. 2:03-CV-01524-RCJ-LRL, 2011 WL 2413155, at
23 *5 (D. Nev. June 7, 2011)¹ ("In the Nevada state courts, such a suggestion may only be made to
24 the jury as an illustration of how to make a calculation, and it results in error if the trial court does

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27 ¹ *Aff'd in part, vacated in part, rev'd in part on other grounds sub nom. Barnard v. Theobald*, 721
28 F.3d 1069 (9th Cir. 2013).

1 not sufficiently admonish the jury that the suggestion can only be used as a method of calculation,
2 not as a suggestion of amount.” (citing *Johnson v. Brown*, 345 P.2d 754, 759 (Nev. 1959)).

3 I agree that a flat prohibition on such argument is unnecessary and potentially deprives the
4 jury of guidance on how it might arrive at a determination. Costco is equally able to offer its own
5 arguments as to why Aidini’s pain and suffering, if any, would merit a lesser damages amount. I
6 advise both sides that if they wish to make such an argument, they must admonish the jury along
7 the following lines: the argument offering a calculation of non-economic damages is not
8 evidence, but simply argument that the jury is free to accept or reject. Non-economic damages
9 are not dictated by legal precedent or mathematical formulae, but rather the jury must use its own
10 estimates and reasoning to reach a figure appropriate to the specific case.

11 IT IS THEREFORE ORDERED that defendant Costco’s motion in limine to preclude the
12 plaintiff from requesting the jury to award a specific amount of non-economic damages (**ECF No.**
13 **47) is DENIED.**

14 DATED this 10th day of April, 2017.

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17 ANDREW P. GORDON
18 UNITED STATES DISTRICT JUDGE
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